

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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UNITED STATES OF AMERICA)

v.)

LUIS RODRIGUEZ,
Defendant.)

Case No. 5:18-cr-118-3

ORDER ON MOTION TO SUPPRESS
(Doc. 49)

Defendant Luis Rodriguez (“Mr. Rodriguez”) is charged with conspiracy to distribute heroin, possession with intent to distribute heroin and fentanyl, and attempting to aid and abet another to distribute heroin and fentanyl. Defendant filed a motion to suppress the results of a search of his bedroom in the apartment he shared with his grandparents on September 13, 2018.

The court held an evidentiary hearing on June 4, 2019, at which time the motion was taken under advisement.

FACTS

On or about Thursday September 13, 2018, a member of an FBI drug task force operating in the Holyoke, Massachusetts area received information that Mr. Rodriguez was going to deliver a large amount of heroin at approximately 8:30 P.M. in the parking lot of the Spare Time Bowling Lanes at 525 Pleasant Street, Northampton, Massachusetts in a white Toyota Camry. (Gov’t Ex. 1, ¶ 1.) Task force officers established surveillance of the parking lot and positioned arrest teams, planning to arrest Mr. Rodriguez. (*Id.* ¶¶ 1, 2.) At approximately 8:00 P.M., officers also established surveillance of Mr. Rodriguez’s residence at 83 Leary Drive, Holyoke, Massachusetts. (*Id.* ¶ 3.) Officers at the residence observed the white Toyota Camry leave Leary

Drive and enter the I-91 north ramp at approximately 8:20 P.M. (*Id.* ¶ 3.) After observing the white Toyota Camry enter the parking lot at 525 Pleasant Street, officers moved in and detained Mr. Rodriguez and the passenger of the vehicle (“Mr. Rodriguez’s passenger”). (*Id.* ¶¶ 4–6.) An initial search of the vehicle revealed an estimated 5,000 bags of heroin inside a backpack. (*Id.* ¶ 6.) Arresting officers contacted officers at Mr. Rodriguez’s residence, who secured the residence pending consent to search or the issuance of a warrant. (*Id.* ¶ 7.) Officers placed Mr. Rodriguez and Mr. Rodriguez’s passenger under arrest and transported both to the Northampton Police Department (“NPD”) for booking. (*Id.* ¶ 6.)

Two officers of the Holyoke Police Department (“HPD”) and a Special Agent of the FBI spoke with Mr. Rodriguez in the parking area of the NPD while officers booked Mr. Rodriguez’s passenger. (*Id.* ¶ 8.) An officer of the HPD asked Mr. Rodriguez if he was more comfortable communicating in English or Spanish, and Mr. Rodriguez replied that he spoke both and was comfortable with English. (*Id.* ¶ 8.) The same officer read Mr. Rodriguez his *Miranda* rights. (*Id.* ¶ 8.) Officers showed Mr. Rodriguez a *Miranda* rights card (Gov’t Ex. 2) and allowed Mr. Rodriguez to read it. (Gov’t Ex. 1, ¶ 8.) Mr. Rodriguez signed the card at 9:10 P.M. (Gov’t Ex. 2.)

After he signed the *Miranda* rights card, officers informed Mr. Rodriguez of the investigation and informed him that other officers were waiting at his residence. (Gov’t Ex. 1, ¶ 8.) Officers also informed Mr. Rodriguez that they knew his grandparents also lived at his residence, but that there was no indication that they were part of the investigation. (*Id.*) An officer read Mr. Rodriguez a copy of a consent form (Gov’t Ex. 3) and allowed Mr. Rodriguez to read the form. (Gov’t Ex. 1, ¶ 8.) Mr. Rodriguez told officers that he did not want his grandparents involved and requested that the officers limit their search to his bedroom. (*Id.*)

Officers told Mr. Rodriguez that, if he was honest, officers would limit their search to his room and speak on behalf of his grandparents if an issue arose later with the housing authority. (*Id.*) Mr. Rodriguez signed the consent to search form at 9:40 P.M. (Gov't Ex. 3.) After signing the form, Mr. Rodriguez informed one of the officers, in Spanish, that the contraband officers sought was in a backpack in the closet and requested that the officers write this on the consent form. (Gov't Ex. 1, ¶ 8.) Officers added this information to the consent form. (Gov't Ex. 3.) Officers subsequently took Mr. Rodriguez into the NPD for booking. (Gov't Ex. 1, ¶ 8.)

Officers at the residence were informed of the signed consent form. (*Id.* ¶ 9.) They waited until the form was delivered to the residence before beginning their search. (*Id.* ¶¶ 9, 10.) After informing Mr. Rodriguez's family of the investigation and showing them the signed consent form (Gov't Ex. 3), officers searched Mr. Rodriguez's bedroom. (Gov't Ex. 1, ¶ 10.) The search revealed a black backpack in Mr. Rodriguez's closet containing: an estimated 2,500 bags of suspected heroin wrapped in green plastic wrap with a piece of pink paper with "VOLTAGE" stamped on it, an estimated 50 bags of suspected heroin wrapped in blue paper, \$1,075 in U.S. currency, one white Apple iPhone, one travel size tube of toothpaste and a travel size toothbrush, and a Massachusetts Identification Card for another person. (*Id.* ¶ 11.) A search of the remainder of the room revealed a black cloth bag on the right side of bed containing \$811 in U.S. currency and three clear plastic sandwich bags, each containing an estimated one ounce of suspected marijuana. (*Id.*) Officers found \$250 in U.S. currency under the TV stand, \$1,116 in U.S. currency in a metal box under the TV stand, \$1,860 in U.S. currency in a shoe box in the closet, and an estimated 2,050 bags of heroin wrapped in pink paper and \$650 in U.S. currency in a gray shoe box under the futon. (*Id.*) In a black shoe box under the futon, officers found one half pack of suspected heroin (estimated 50 bags) wrapped in blue paper, an open half pack of suspected

heroin (estimated 30 bags) wrapped in blue paper, a crumbled up ball of transparent green wrapper, and pieces of blue paper. (*Id.*) Officers discovered five half packs of suspected heroin (estimated 50 bags each) in a large clear plastic bag also containing rice in the pocket of a green jacket in the closet. (*Id.*) In the dresser, officers found eight bags containing various amounts of suspected marijuana (estimated total of three ounces), \$910 in U.S. currency, one LG cell phone, an open box of sandwich bags, and a digital scale. (*Id.*)

On October 4, 2018, a grand jury in the District of Vermont returned a three-count indictment against Mr. Rodriguez. Count One charged Mr. Rodriguez with conspiring to distribute 100 grams or more of heroin in or about and between June 2018 and September 2018 in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(B)(i). Count Two charged Mr. Rodriguez with possessing with intent to distribute heroin and 40 grams or more of fentanyl on or about September 6, 2018 in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B) and 18 U.S.C. § 2. Count Three charged Mr. Rodriguez with attempting to aid and abet another person to possess with intent to distribute 100 grams or more of heroin and 40 grams or more of fentanyl on or about September 13, 2018 in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(B)(i), and 841(b)(1)(B)(vi) and 18 U.S.C. § 2.

Defendant filed a Motion to Suppress on April 4, 2019. (Doc. 49.) The Government opposes Defendant's Motion to Suppress and filed a Response in Opposition to the Defendant's Motion to Suppress on May 2, 2019. (Doc. 52.)

ANALYSIS

Defendant takes issue with his waiver of his *Miranda* rights, his consent to search, and the scope of his consent to search.

I. Waiver of *Miranda* rights

Defendant argues that his waiver of his *Miranda* rights was not voluntary. Where a suspect has been properly given the *Miranda* warnings, he or she may then decide to invoke those rights by declining to answer questions or requesting an attorney or to waive those rights by participating in a police interview. *United States v. Plugh*, 648 F.3d 118, 127 (2d Cir. 2011) (citing *Oregon v. Elstad*, 470 U.S. 298, 308 (1985)). Invocation of *Miranda* rights and waiver of those rights involve two distinct inquiries: an affirmative request for counsel (invocation) and a waiver which may be express or implied through conduct. *Smith v. Illinois*, 469 U.S. 91, 98 (1984). Here, there is no contention that Mr. Rodriguez attempted to invoke his *Miranda* rights by requesting an attorney and was questioned in violation of his wishes; accordingly, only analysis of Mr. Rodriguez's waiver of those rights is necessary.

“The Government bears the burden of proving by a preponderance of the evidence that a valid waiver occurred.” *United States v. Murphy*, 703 F.3d 182, 192 (2d Cir. 2012). In order to prove that an accused's statements during a custodial interrogation are admissible at trial, the prosecution must “establish that the accused in fact knowingly and voluntarily waived [*Miranda*] rights when making the statement.” *Plugh*, 648 F.3d at 127 (alteration in original) (quoting *Berghuis v. Thompson*, 560 U.S. 370, 382 (2010)). First, for a suspect to knowingly relinquish his or her rights “the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Id.* (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)). Second, for a defendant to voluntarily relinquish his or her rights, the waiver must be “the product of a free and deliberate choice rather than intimidation, coercion, or deception.” *Id.* (quoting *Moran*, 475 U.S. at 421). Here, there is no contention that Mr. Rodriguez did not knowingly waive his *Miranda* rights. The printed warning

card adequately informed him of his *Miranda* rights. (Gov't Ex. 2.) The issue in dispute is the *voluntariness* of Mr. Rodriguez's waiver.

To determine voluntariness, a court must examine "whether the subject's 'will was overborne.'" *United States v. Corbett*, 750 F.3d 245, 253 (2d Cir. 2014) (quoting *Plugh*, 648 F.3d at 128). When considering the voluntariness of a suspect's waiver, the court must consider the "totality of the circumstances." *Fare v. Michael C.*, 442 U.S. 707, 725 (1979); *see also Schneekloth v. Bustamonte*, 412 U.S. 218, 226 (1973) (same). Thus, the court must consider the defendant's "background and experience, the conditions of his interrogation and the conduct of the law enforcement officers." *United States v. Ruggles*, 70 F.3d 262, 264-65 (2d Cir. 1995) (finding defendant familiar with police questioning, that he did not lack maturity, education, or intelligence, and that he was 28 at time of questioning). While each of these considerations is relevant, "no single criterion controls whether an accused's confession is voluntary." *Green v. Scully*, 850 F.2d 894, 901 (2d Cir. 1988). A waiver cannot be obtained from a defendant through the use of "any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." *Malloy v. Hogan*, 378 U.S. 1, 7 (1964) (citations omitted). However, there is a distinction between "unfulfillable" promises that may make a waiver involuntary and "vague promises of leniency for cooperation" that, without more, do not make a waiver coerced under the totality of the circumstances. *United States v. Gaines*, 295 F.3d 293, 299 (2d Cir. 2002) (citing *United States v. Jaswal*, 47 F.3d 539, 542 (2d Cir. 1995)) (finding agent's statements regarding possible benefits of cooperation "contained no material misrepresentations or unfulfillable promises"). Finally, an "an explicit statement of waiver is not invariably necessary" to find a defendant waived his or her *Miranda* rights. *North Carolina v. Butler*, 441 U.S. 369, 369 (1979). When a defendant received and understood a

Miranda warning, a subsequent “uncoerced statement establishes an implied waiver of the right to remain silent.” *Berghuis*, 560 U.S. at 384.

Here, considering the totality of the circumstances, Mr. Rodriguez waived his *Miranda* rights voluntarily. Officers read Mr. Rodriguez his *Miranda* rights, gave him a card that explained the *Miranda* rights, and gave him a chance to read the card. (Gov’t Ex. 1, ¶ 8.) Mr. Rodriguez signed the card at 9:10 P.M. (Gov’t Ex. 1, ¶ 8; Gov’t Ex. 2.) Police informed Mr. Rodriguez of his rights in the parking area of the NPD. (Gov’t Ex. 1, ¶ 8.) Mr. Rodriguez understood the explanation of his rights in English. (*Id.*) Testimony at the suppression hearing demonstrated that Mr. Rodriguez did not appear to be under the influence of alcohol or drugs. The interaction with the police was civil and professional. In his testimony at the suppression hearing, Mr. Rodriguez did not describe any inappropriate or oppressive police conduct. After the recitation of *Miranda* rights and after Mr. Rodriguez signed the *Miranda* card, he spoke with officers. *See Plugh*, 648 F.3d at 125 (finding defendant’s choice to speak with law enforcement after signing *Miranda* waiver to be implied waiver); *see also Berghuis*, 560 U.S. at 385 (“As a general proposition, the law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford.”). In response to Mr. Rodriguez’s concern regarding his grandparents, officers advised Mr. Rodriguez that “as long as he was honest with us and that he did not hide anything elsewhere in the apartment we would limit our search to his room, and that [officers] would speak on his behalf of his grandparents if an issue were to arise with the Housing Authority.” (Gov’t Ex. 1, ¶ 8.) The search was in fact confined to Mr. Rodriguez’s bedroom; the rest of his grandparents’ apartment was not searched. (*Id.* ¶ 11.) Although the Housing Authority later evicted Mr. Rodriguez’s grandparents, the testimony at the suppression

hearing was that police did not advocate for leniency at the Housing Authority proceeding because no family member informed officers of the proceeding. There is no indication that officers made a false or unfulfillable promise to Mr. Rodriguez. *See Gaines* 295 F.3d at 299. Therefore, considering the totality of the circumstances, Mr. Rodriguez voluntarily waived his *Miranda* rights.

II. Mr. Rodriguez's Consent to Search

Defendant argues that his consent to search was not voluntary. While warrantless searches of private property are generally presumed to be unreasonable, a suspect may waive this right by voluntarily giving consent. *See United States v. Snype*, 441 F.3d 119, 130 (2d Cir. 2006). In a consent to search, the government must prove by a preponderance of the evidence that a defendant consented to search voluntarily. *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968). Voluntary consent must not be obtained through “duress or coercion, express or implied.” *Schneckloth*, 412 U.S. at 228; *see also United States v. Garcia*, 56 F.3d 418, 422 (2d Cir. 1995) (same). Voluntary consent is a matter of fact and a court must consider all of the circumstances, including the defendant’s age, education, intelligence, background, lack of advice regarding constitutional rights, the nature of the questioning, the repeated and prolonged nature of the questioning, and any physical force or psychological coercion used. *Schneckloth*, 412 U.S. at 226-27. “[T]he ultimate question presented is whether the officer had a reasonable basis for believing that there had been consent to the search.” *United States v. Isiofia*, 370 F.3d 226, 231 (2d Cir. 2004) (alteration in original) (quoting *Garcia*, 56 F.3d at 422).

Here, Mr. Rodriguez consented to a search of his bedroom within the residence he shared with his grandparents. Officers read a copy of the consent to search form to Mr. Rodriguez, and allowed him to read and ask questions about the form. (Gov’t Ex. 1, ¶ 8.) Mr. Rodriguez

requested, and officers agreed, to limit the search to Mr. Rodriguez's bedroom. (*Id.*) Mr. Rodriguez signed the consent form at 9:40 P.M. (Gov't Ex. 3.) Subsequently, Mr. Rodriguez alerted officers, in Spanish, that the contraband they sought was in a backpack in his closet and requested that officers add that to the consent to search form; officers noted this on the form. (Gov't Ex. 1, ¶ 8; Gov't Ex. 3.) Mr. Rodriguez is an adult, capable of speaking and understanding both English and Spanish, did not appear to be under the influence of any drugs or alcohol, was not subject to any violence, threats of violence, or psychological coercion, and was not subject to prolonged questioning. *See Schneckloth*, 412 U.S. at 226-27. Furthermore, officers advised Mr. Rodriguez of his constitutional right to a search warrant, Mr. Rodriguez read this right on the consent form, and had an opportunity to ask officers question about this constitutional right. (Gov't Ex. 1, ¶ 8; Gov't Ex. 3.); *see Schneckloth*, 412 U.S. at 226-27. Officers had a reasonable basis for believing Mr. Rodriguez had consented to the search. *See Isiofia*, 370 F.3d at 231. Therefore, Mr. Rodriguez's consent to search was voluntary.

III. Scope of Consent Search

Defendant argues that he limited his consent to the backpack in the closet based on the fact that he directed officers to the backpack in the closet and based on the fact that he insisted that officers add this information to the consent form after he had signed the form. (Doc. 49 at 5.) The Government argues that Mr. Rodriguez's comments subsequent to signing the consent form demonstrated his "effort to be seen as cooperative and to make sure that his grandparents did not receive blame." (Doc. 52. at 13.)

A defendant may withdraw consent or limit the scope of a consent search before and after giving consent and before discovery of any incriminating materials. *See Florida v. Jimeno*, 500 U.S. 248, 252 (1991) ("A suspect may... delimit as he chooses the scope of the search to which

he consents.”); *United States v. Powers*, 432 F. App’x 16, 18 (2d Cir. 2011) (finding wife never withdrew consent); *United States v. Sanders*, 424 F.3d 768 (8th Cir. 2005) (finding defendant’s actions blocking search of his pockets manifested objectively reasonable communication of withdrawal of consent). There is no contention that Mr. Rodriguez attempted to withdraw his consent. Instead, Defendant argues that his subsequent statements limited the search to the backpack in the closet exclusively.

The scope of a consent search “is that of ‘objective’ reasonableness – what would the typical reasonable person have understood by the exchange between the officer and the suspect?” *United States v. O’Brien*, No. 17-2087-cr, 2019 WL 2399228, at *14 (2d Cir. June 7, 2019) (quoting *Jimeno*, 500 U.S. at 251).

Here, officers read the consent form to Mr. Rodriguez, Mr. Rodriguez read the form himself, and officers gave him a chance to ask questions about the form. (Gov’t Ex. 1, ¶ 8.) Mr. Rodriguez signed the consent form at 9:40 P.M. (Gov’t Ex. 3.) Subsequently, Mr. Rodriguez alerted officers, in Spanish, that the contraband they sought was in a backpack in his closet and requested that officers add that information to the consent to search form; officers noted this on the form. (Gov’t Ex. 1, ¶ 8; Gov’t Ex. 3.) The testimony at the suppression hearing confirmed these facts. Further, the testimony at the suppression hearing demonstrated that Mr. Rodriguez did not tell officers that they may *only* search the backpack in the closet. It was reasonable for the officers to conclude that Mr. Rodriguez directed them to the backpack in order to appear cooperative and ensure his grandparents were not blamed in the investigation. (Doc. 52 at 13.) It was similarly reasonable for officers to conclude that Mr. Rodriguez had not limited the scope of consent to the backpack only. (*Id.*) It was objectively reasonable for officers to believe that Mr.

Rodriguez had consented to a search of his bedroom and had not limited his consent to the backpack in the closet.

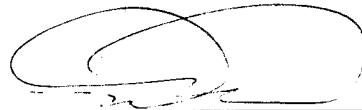
While it is true that “the scope of a search is generally defined by its expressed object,” “object” means the purpose of the search and does not mean a precise physical entity as the Defendant argues. *Jimeno*, 500 U.S. at 251 (citing *United States v. Ross*, 456 U.S. 798, 824 (1982)) (finding it objectively reasonable that consent to search car included containers inside the car); *United States v. Mire*, 51 F.3d 349, 352 (2d Cir. 1995) (“Here, that object was a general search of the bag.”). While police may not damage items to conduct a search, police are not limited to searching only a particular container. *See United States v. Alvarez*, 235 F.3d 1086, 1089 (8th Cir. 2000) (finding that consent to general search of vehicle did not include destruction of vehicle or contents, but finding probable cause for cutting open spare tire); *Ross*, 456 U.S. at 824 (“A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search.”).

Here, officers informed Mr. Rodriguez that the object of their search was to find his supply of heroin and fentanyl. (Doc. 49 at 5.) Therefore, officers lawfully searched Mr. Rodriguez’s bedroom, including the various bags and shoeboxes, as areas where the supply of heroin and fentanyl may be found. *See Ross*, 456 U.S. at 824. By respecting his request that they search only his room, officers remained within the scope of the search to which Mr. Rodriguez consented.

Conclusion

The court DENIES Defendant's motion to suppress. (Doc. 49.)

Dated at Rutland, in the District of Vermont, this 21st day of June, 2019.

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a horizontal line and some smaller, less distinct strokes.

Geoffrey W. Crawford, Chief Judge
United States District Court